



JUL 17 2013

Ms. Julie A. Evans
General Counsel
University of North Dakota
O'Kelly Hall Room 104
221 Centennial Drive Stop 8196
Grand Forks, ND 58202-8196

Sent: United Parcel Service
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Dear Ms. Evans:

On March 29, 2013, the U.S. Department of Education's (Department's) Federal Student Aid notified the University of North Dakota (UND/University) of its intent to fine UND a total of \$115,000 for violations of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the Clery Act) in Section 485(f) of the Higher Education Act, as amended (HEA). The proposed fine was based on the findings in a Final Program Review Determination (FPRD) issued on December 19, 2011. In a letter dated April 17, 2013, Ms. Julie A. Evans, the University's General Counsel, submitted a written response to the fine notice on UND's behalf and requested that the Department reconsider and lower the proposed fine. You specifically noted that UND is not requesting a hearing on the proposed fine.

The Department has considered the arguments and facts presented in your letter. This letter provides the Department's final decision on UND's request for a reconsideration of the proposed fine.

In our March 29, 2013, fine notification, the Department proposed to fine UND a total of \$115,000 based on the following violations of the Clery Act:

1. UND did not properly classify and report crime statistics in its 2009 Annual Security Report (ASR). Specifically, UND did not include one (1) aggravated assault and one (1) on-campus liquor law violation referred for disciplinary action, for calendar year 2009. The Department proposed to impose a fine of \$27,500 and \$5,000 respectively.
2. UND did not properly define the campus geographic boundaries and compile the crime statistics for non-campus property. In particular, UND did not include eighteen (18) of its noncampus locations in its 2009 ASR. The Department proposed to impose a fine of \$27,500.
3. UND did not include in its 2009 ASR a statement of current campus policies for making timely warning reports to members of the campus community regarding crimes, such as forcible sex offenses. The Department proposed to impose a fine of \$27,500.

Federal Student Aid
An OFFICE of the U.S. DEPARTMENT of EDUCATION

Administrative Actions and Appeals Service Group
830 First St., N.E. Washington, D.C. 20002-8019
StudentAid.gov

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4. UND did not include in its 2009 ASR a statement of policies for preparing the annual disclosure of crime statistics. The Department proposed to impose a fine of \$27,500.

In Ms. Evans' letter, UND asked the Department to reconsider the fines based on the violations discussed above and are addressed below.

#1. Failure to properly classify and report one aggravated assault and one liquor law violation.

The FPRD concluded that UND did not provide accurate crime statistics in its 2009 ASR. Specifically, case #200931055 was improperly coded as a "Simple Assault" and, therefore, omitted in UND's 2009 crime statistics. Further, UND acknowledged that it under-reported one liquor law violation disciplinary referral in its calendar year 2009 crime statistics.

Ms. Evans' letter stated that there was no intent on the part of UND to deceive the public regarding the University's crime statistics. Specifically, the misclassification of the assault for calendar year 2009 occurred because UND followed the definition found in the North Dakota Century Code, and UND immediately corrected the coding after it was notified by the Department.

Institutions must compile and report crime statistics in accordance with the definitions of crimes provided in appendix A to Subpart D of Section 668 of the General Provisions (i.e. UCR definitions). UND's failure to properly classify and report crime statistics is misleading to its students and employees who must be able to rely on the disclosures of campus crime statistics, policies and statements, and the accurate reporting of crimes and statistics to take precautions for their safety. Therefore, the Department affirms the proposed fine amount.

#2. Failure to properly define the campus geographic boundaries and compile the crime statistics for non-campus property.

The FPRD found that UND failed to properly define the campus geographic boundaries, and compile and report crime statistics for eighteen (18) of its noncampus locations. Ms. Evans' letter explained that UND failed to properly define the campus geographic boundaries, and compile and report crime statistics for eighteen (18) of its noncampus locations because those properties were distance learning sites in which there existed an agreement to broadcast a class, but the University had no contract that gave it "control" of the physical space. Consequently, the University did not initially think that those 18 properties should have been included in the statistical data, but it has since corrected the data.

UND acknowledged that there was an agreement to broadcast classes from the 18 properties. As such, UND had direct control of the 18 properties for the purposes of broadcasting classes and, consequently, had responsibility to report crimes that occurred in those locations used for the direct support of, or in relationship to the institution's educational purpose. As a result, UND's

current and prospective students and employees were denied accurate information to make informed safety decisions. Therefore, the Department affirms the proposed fine amount.

#3. Failure to include in its 2009 ASR a statement of current campus policies for making timely warning reports to members of the campus community.

The FPRD found that UND's 2009 ASR did not contain a statement of current policies for making timely warning reports to members of the campus community.

Ms. Evans asserted that UND believes that it had a timely warning policy in place "based on custom and practice" and pointed out that UND re-published its ASR after the corrections were made.

The Department notes that after the program review, UND revised its calendar year 2009 ASR and corrected the missing timely warning policy. However, as indicated in its August 15, 2011, response to the program review, UND acknowledged that it did not have a timely warning policy at the time of the review. As such, current and prospective students and employees at the time of the 2009 ASR's initial publication were denied accurate information to make informed safety decisions. Therefore, the Department affirms the proposed fine amount.

4. Failure to include in its 2009 ASR a statement of policies for preparing the annual disclosure of crime statistics.

The FPRD concluded that UND's 2009 ASR did not contain a statement of current policies for preparing the annual disclosure of crime statistics.

UND did not offer a response for this violation and therefore, the Department affirms the proposed fine amount.

Final Decision

For the reasons discussed above, the Department is affirming the proposed fine of \$27,500 for UND's failure to classify and report one aggravated assault, and \$5,000 for failure to properly classify and report one on-campus liquor law violation; \$27,500 for failure to properly define UND's non-campus property; \$27,500 for UND's failure to include in its 2009 ASR a statement of current policies for making timely warning reports to members of the campus community; and \$27,500 for UND's failure to include in its 2009 ASR a statement of policies for preparing the annual disclosure of crime statistics. Therefore, the Department imposes a total fine of \$115,000.

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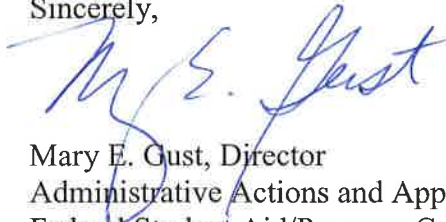
The \$115,000 fine is due to the Department within 30 days of the date of this letter. Payment must be in the form of a certified or cashier's check, and made payable to the U.S. Department of Education. If payment is not received by the Department within that 30-day time period, interest will accrue in monthly increments until payment is received. Please send your fine payment to me at the following address:

Administrative Actions and Appeals Service Group
U.S. Department of Education
Federal Student Aid/Program Compliance
830 First Street, NE - UCP-3, Room 84F2
Washington, DC 20002-8019

Please identify the payment as Bill No. AAA201303020 to ensure proper crediting of your payment account.

If you have any questions about this letter, please contact Lawrence Mwethuku of my staff at 202/377-3684.

Sincerely,



Mary E. Gust, Director
Administrative Actions and Appeals Service Group
Federal Student Aid/Program Compliance
U.S. Department of Education

cc: Dr. Robert O. Kelley, President, UND
Dr. Sylvia Manning, President, the Higher Learning Commission (HLC), via
info@hlcommission.org
Mr. Duaine Espegard, President, North Dakota State Board of Higher Education, via
Duaine.Espgare@ndus.edu